IN THE UTAH COURT OF APPEALS

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Kenneth Bowdrey, Petitioner, v. Workforce Appeals Board, Department of Workforce Services; and Pacific Flyway Wholesale, Respondents.	)	MEMORANDUM DECISION (Not For Official Publication) Case No. 20090503-CA F I L E D (December 16, 2010) 2010 UT App 362

Original Proceeding in this Court

Attorneys: Lisa M. Marcy, Salt Lake City, for Petitioner
Suzan Pixton, Salt Lake City, for Respondents

Before Judges McHugh, Voros, and Roth.

VOROS, Judge:

Petitioner Kenneth Bowdrey (Petitioner) seeks review of a decision of the Workforce Appeals Board (the Board) affirming a decision of a Department of Workforce Services Administrative Law Judge (ALJ) denying his claim for unemployment insurance benefits under section 35A-4-405(1) of the Utah Employment Security Act (the Act), see Utah Code Ann. § 35A-4-405(1) (Supp. 2010). We affirm.

Petitioner first claims that his separation from Pacific Flyway Wholesale (Pacific) was not a voluntary quit but a discharge without cause. This court reviews the Board's determinations regarding voluntariness for abuse of discretion. See Arrow Legal Solutions Grp. v. Department of Workforce Servs., 2007 UT App 9, ¶ 6, 156 P.3d 830. Under this standard, this court "will uphold [the Board's] decision so long as it is within the realm of reasonableness and rationality." Id. (alteration in original) (internal quotation marks omitted).

One of the purposes of the Act is "to lighten the burdens of persons unemployed through no fault of their own." Utah Admin. Code R994-102-101(1) (emphasis added). Under the Act, an

individual is ineligible for unemployment benefits "[f]or the week in which the claimant left work voluntarily without good cause, . . . and for each week thereafter until the claimant has performed services in bona fide, covered employment and earned wages for those services equal to at least six times the claimant's weekly benefit amount." Utah Code Ann. § 35A-4-405(1)(a). Under rules governing the Department of Workforce Services (Department), a separation is considered voluntary if the claimant was the "moving party in ending the employment relationship." Utah Admin. Code R994-405-101(1). This includes failing to return to work after "a period of absence initiated by the claimant." Id. R994-405-101(1)(c). "A separation is a discharge," however, "if the employer was the moving party in determining the date the employment ended." Id. R994-405-201.

Here, Petitioner failed to report to work because he had swollen feet and was experiencing personal problems. He was staying in a motel room without a telephone and did not find a phone and call Pacific to notify his supervisor of his absence. Instead of going to work on his next scheduled day, Petitioner went to a local Department office and applied for unemployment benefits. When a Department representative called Pacific, the company maintained that Petitioner had voluntarily quit due to his "no show no call." At that time, Petitioner could have declared that he had not quit or that he wanted to keep his job, but he did not. Instead, he told the Department officer that it was "his fault not his employer's but he wasn't thinking." He also admitted that he should have asked for a leave of absence rather than simply not showing up. Moreover, Pacific's policy manual states that failure to report to work for a day without calling in by the end of the shift results in voluntary termination. On these facts, the Board's determination that Petitioner voluntarily quit his job was "within the realm of reasonableness and rationality." Arrow Legal Solutions Group, 2007 UT App 9, ¶ 6.

Petitioner next claims that even if he did voluntarily quit, he had good cause to do so. In reviewing good cause, we defer to the agency and will not overturn its decisions "unless we determine that it has abused [its] discretion." Robinson v. Department of Emp't Sec., 827 P.2d 250, 252 (Utah Ct. App. 1992). The court "will not disturb the Board's application of law to its factual findings unless its determination exceeds the bounds of reasonableness and rationality." Johnson v. Department of Emp't Sec., 782 P.2d 965, 968 (Utah Ct. App. 1989).

"To establish good cause, a claimant must show that continuing employment would have caused an adverse effect which the claimant could not control or prevent." Utah Admin. Code R994-405-102. To successfully make this showing, a claimant must demonstrate that the adverse effect caused a hardship and that he

or she did not have the ability to control or prevent the adverse effect. See id. R994-405-102(1)(a)-(b). A hardship means that the "actual or potential physical, mental, economic, personal or professional harm caused or aggravated by the employment" was "sufficiently adverse to a reasonable person so as to outweigh the benefit of remaining employed." Id. R994-405-102(1)(a). Additionally, even if an adverse effect is shown, good cause will not be found if the claimant could reasonably have (1) "continued working while looking for other employment," (2) preserved the job by "using approved leave, transferring, or making adjustments to personal circumstances," or (3) given the employer notice and "an opportunity to make changes that would eliminate the need to quit." Id. R994-405-102(1)(b).

Even if we were to assume that Petitioner has demonstrated hardship here, we cannot conclude that he has demonstrated that he lacked the ability to control or prevent the adverse effect. Although Pacific had previously made accommodations at Petitioner's request, he did not notify Pacific of his situation or discuss options such as a leave of absence or getting a ride with a co-worker. In fact, he never attempted to speak with Pacific prior to the separation; he just stopped going to work. On this record, we cannot say that the Board's decision "exceeds the bounds of reasonableness and rationality." Johnson, 782 P.2d at 968.

Finally, Petitioner claims that he should have received unemployment benefits under the standard of "equity and good conscience." We review Board decisions under the "equity and good conscience" standard for abuse of discretion. See Adams v. Board of Review of Indus. Comm'n, 776 P.2d 639, 643 (Utah Ct. App. 1989). This standard is not an invitation for this court to engage in a "free-wheeling judicial foray into the record" and impose a decision based on our "collective sense of equity and good conscience." Pritcher v. Department of Emp't Sec., 752 P.2d 917, 919 (Utah Ct. App. 1988). Rather, our approach "must reflect the broad discretion conferred by the legislature upon the Industrial Commission." Adams, 776 P.2d at 642 (citing Salt Lake City Corp. v. Department of Emp't Sec., 657 P.2d 1312, 1316 (Utah 1982)).

"A claimant may not be denied eligibility for benefits if the claimant leaves work under circumstances where it would be contrary to equity and good conscience to impose a disqualification." Utah Code Ann. § 35A-4-405(1)(b) (Supp. 2010). To demonstrate that a denial of unemployment insurance would be against equity and good conscience, a claimant must establish that the claimant both acted reasonably and demonstrated a continuing attachment to the labor market. See Utah Admin. Code R994-405-103(1)(a)-(b). A claimant acts

reasonably where "the decision to quit [is] logical, sensible, or practical." Id. R994-405-103(1)(a).

Petitioner here has not demonstrated that his decision to quit work was "logical, sensible, or practical," id. Petitioner was experiencing personal, health, and transportation problems. But rather than attempting to work with an employer that had already demonstrated a willingness to accommodate him, Petitioner simply did not report to work and did not contact his supervisor. And on his next scheduled work day, Petitioner again did not report to work. Instead, he applied for unemployment benefits. When confronted with these facts, Petitioner himself said that "he wasn't thinking." In a similar case we held that "failure to report to work for several days was not reasonable or practical, particularly given the company's policy that two no-show days would be considered self-termination." Hurtado v. Department of Workforce Servs., 2001 UT App 5U, para. 5 (mem.) (per curiam). In light of the foregoing, we cannot say that the Board abused its discretion in denying Petitioner unemployment benefits under the "equity and good conscience" standard.

Affirmed.[1]

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J. Frederic Voros Jr., Judge

WE CONCUR:

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Carolyn B. McHugh,
Associate Presiding Judge

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Stephen L. Roth, Judge

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[1]Petitioner also claims that testimony about Pacific's attendance policy at the hearing violated the hearsay and best evidence rules. This argument is inadequately briefed. See Utah R. App. P. 24(a)(9) (mandating that the argument contain "citations to the authorities, statutes, and parts of the record relied on"); see also State v. Green, 2004 UT 76, ¶ 13, 99 P.3d 820; State v. Bishop, 753 P.2d 439, 450 (Utah 1988). Petitioner's brief contains no citations to authorities and no legal analysis related to the evidentiary questions he asserts. Accordingly, we do not address these issues.